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Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 271

PARAMINO LUMBER COMPANY AND UNION INSURANCE SOCIETY OF CANTON, LTD.,

Appellants,

vs.

WM. A. MARSHALL, DEPUTY COMMISSIONER, FOURTEENTH COMPENSATION DISTRICT UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AND JOHN T. CLARK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

STATEMENT AS TO JURISDICTION.

STANLEY B. LONG,
EDWARD G. DOBRIN,
Counsel for Appellants,

BOGLE, BOGLE & GATES,

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Act of Congress the validity of which is involved	2
Date of the decree sought to be reviewed	3
Date of the application for appeal	3
Nature of the case and rulings below	3
Case believed to sustain jurisdiction	7
Exhibit "A"—Order of the District Court of the United States for the Western District of Washington of March 29, 1939	8
Exhibit "B"—Opinion of the District Court of the United States for the Western District of Washington	11

Case Cited.

International Ladies Garment Workers Union v. *Donnelly Garment Co.*, 304 U. S. 243, 58 Sup. Ct. Rep. 875, 82 L. Ed. 1316	7

Statutes Cited.

Constitution of the United States, Fifth Amendment	4
Constitution of the United States, Fourteenth Amendment	4
Judicial Code, Section 266, as amended by the Act of August 24, 1937, Chapter 754, Section 3, 50 Stat. 752, Title 28, U. S. C. 380a	2, 3, 5
Longshoremen's and Harbor Workers' Compensation Act (Title 33, U. S. C., Section 901, et seq.)	3
Private Act No. 445 of the 74th Congress, approved April 10, 1936, 49 Stat. 2244	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 271

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

IN ADMIRALTY.

(Consolidated Causes.)

No. 47

PARAMINO LUMBER COMPANY, A CORPORATION, AND UNION INSURANCE SOCIETY OF CANTON, LTD., A CORPORATION,

Libelants,

vs.

WM. A. MARSHALL, DEPUTY COMMISSIONER, FOURTEENTH COMPENSATION DISTRICT UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AND JOHN T. CLARK,

Respondents.

No. 48

PARAMINO LUMBER COMPANY, A CORPORATION, AND UNION INSURANCE SOCIETY OF CANTON, LTD., A CORPORATION,

Libelants,

vs.

WM. A. MARSHALL, DEPUTY COMMISSIONER, FOURTEENTH COMPENSATION DISTRICT UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AND JOHN T. CLARK,

Respondents.

JURISDICTIONAL STATEMENT REQUIRED BY SUPREME COURT RULE 12, PARAGRAPH 1.

Come now Paramino Lumber Company, a corporation, and Union Insurance Society of Canton, Ltd., a corporation,

libelants in the above entitled and numbered consolidated causes and appellants herein, and pursuant to Supreme Court Rule 12, Paragraph 1, and present and file this their jurisdictional statement showing the basis upon which said libelants, appellants herein, contend that the Supreme Court of the United States has appellate jurisdiction to review on appeal the final decree appealed from herein, as follows:

I.

The statute believed to sustain the jurisdiction of the Supreme Court of the United States is the Judicial Code, Section 266, as amended by the Act of August 24, 1937, Chapter 754, Section 3, 50 Stat. 752, Title 28 U. S. C. 380a.

II.

The validity of Private Act No. 445 of the 74th Congress, entitled "An Act for the Relief of John T. Clark of Seattle, Washington", approved April 10, 1936, 49 Stat. 2244, is involved and is hereinafter set out verbatim as follows:

"AN ACT

For the relief of John T. Clark, of Seattle, Washington

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the case of John T. Clark, of Seattle, Washington, whose disability compensation under the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, was terminated as of July 5, 1931, by a compensation order filed August 26, 1931, the Employees' Compensation Commission be, and it is hereby authorized and directed to review such order in accordance with the procedure prescribed in respect of such claims in section 19 of said Act, and in accordance with such section to issue a new compensation order which may terminate, continue, increase, or decrease such

compensation, the provisions of Sections 21 and 22 of the said Act, as amended, to the contrary notwithstanding: Provided, That such new order shall not affect any compensation paid under authority of the prior order.

"Approved, April 10, 1936." (49 Stat. 2244.)

III.

The date of the decree to be reviewed is June 9, 1939 (date filed in the Office of the Clerk of the United States District Court, Western District of Washington, Northern Division, decree having been signed by United States District Judges Edward E. Cushman and John C. Bowen on June 5, 1939, and by United States Circuit Judge William Healy, dissenting, on June 7, 1939).

IV.

The date upon which the application for appeal was presented is June 19th, 1939.

V.

The following is a statement of the nature of the above entitled and numbered consolidated causes and of the rulings of the United States District Court for the Western District of Washington, Northern Division, convoked pursuant to Judicial Code Section 266, as amended by the Act of August 24, 1937, Chapter 754, Section 3, 50 Stat. 752, Title 28 U. S. C. 380a, bringing the said consolidated causes within the jurisdictional provisions above referred to and relied on:

In these consolidated causes libelants, employer and insurance carrier, respectively, under the Longshoremen's and Harbor Workers' Compensation Act (Title 33 U. S. C. Sec. 901, et seq.), hereinafter referred to as the Act, seek interlocutory and permanent injunctions suspending and

restraining the enforcement, operation, or execution of, or setting aside that certain Private Act of Congress No. 445, entitled "An Act for the Relief of John T. Clark of Seattle, Washington", approved April 10, 1936 (49 Stat. 2244), set forth verbatim in Paragraph II above, upon the ground that such Private Act and the whole thereof is repugnant to the Constitution of the United States and more particularly the Fifth and Fourteenth Amendments thereto.

Cause No. 47 was timely instituted in this court as an independent suit in equity seeking temporary, interlocutory and permanent injunctive relief against said Private Act No. 445 of the 74th Congress, and against a supplemental order and award of compensation of more than $4,000.00, made to respondent John T. Clark, a longshoreman, pursuant to and under the authority of said Private Act. Cause No. 48 was timely instituted as a suit in equity for review by this court (in the manner prescribed by the Longshoremen's and Harbor Workers' Compensation Act (Title 33, U. S. C. A., Sec. 921(b), for review of compensation orders made thereunder), of said supplemental order and award of compensation made by the respondent Wm. A. Marshall as Deputy Commissioner, to the respondent John T. Clark under authority of said Private Act.

Upon application to the Honorable John C. Bowen, Judge of the United States District Court for the Western District of Washington, for the injunctive relief herein sought against said Private Act of Congress and the supplemental compensation order issued and filed by respondent Wm. A. Marshall as Deputy Commissioner pursuant thereto, and temporary restraining orders having been granted and entered in each of said causes in the manner provided by law, and a bond thereon in the amount of $5,000.00 having been duly approved and filed, a specially constituted three-

judge court was convoked pursuant to Judicial Code Section 266, as amended by Act of August 24, 1937, Chapter 754, Sec. 3, 50 Stat. 752, Title 28 U. S. C. A. 380a, for the hearing of the exceptions of the respondent John T. Clark to the sufficiency of the libels herein and of the applications of libelants for interlocutory and permanent injunctions, said three-judge court so convened, consisting of the Honorable William Healy, United States Circuit Judge of the Circuit Court of Appeals for the Ninth Circuit, Honorable Edward E. Cushman, United States District Judge for the Western District of Washington, Southern Division, and the Honorable John C. Bowen, United States District Judge for the Western District of Washington, Northern Division.

After due notice of more than five days given to the Attorney General of the United States and to the respondents in said causes in the manner provided by law (identical orders of Honorable John C. Bowen, United States District Judge for the Western District of Washington, Northern Division, entered in each of these causes before consolidation March 29, 1939, copy of which is appended hereto), these consolidated causes came on for hearing before said three-judge court, sitting in admiralty, on the 24th day of April, 1939, libelants and respondents being represented by their proctors of record, said causes having by stipulation of the parties and order of said three-judge court been transferred to the admiralty side of said court and consolidated for all purposes, including hearing and appeal, and written briefs having been submitted and oral argument having been concluded, said consolidated causes were taken under advisement for determination and decision upon the exceptions of the respondent John T. Clark to the sufficiency of the libels herein upon libelants' applications for interlocutory or permanent injunctive relief as prayed for therein.

On the 10th day of May, 1939, the Honorable Edward E. Cushman and John C. Bowen, United States District Judges, as a majority of said three-judge court, filed their written memorandum decision in said consolidated causes, holding that since the invalidity of the Private Act of Congress above referred to was not so free from doubt as to overcome the presumption of its validity, the Private Act must be upheld by this court, and further holding that by reason thereof the exceptions of the respondent John T. Clark to the libels must be sustained and injunctive relief denied. On said date the Honorable William Healy, United States Circuit Judge, filed his written dissenting decision in said consolidated causes, holding that said Private Act was invalid and unconstitutional for the reasons therein set forth and that the restraining orders heretofore entered and granted should be made permanent. There is appended hereto copies of both the majority and dissenting opinions referred to.

The final decree in these consolidated causes sustaining the exceptions of the respondent John T. Clark to the libels herein, denying the applications of the libelants for interlocutory or permanent injunctions and dismissing said libels with prejudice and with costs in favor of the respondents, was signed by the Honorable Edward E. Cushman and John C. Bowen, United States District Judges, on the 5th day of June, 1939, and by the Honorable William Healy, United States Circuit Judge, dissenting, on the 7th day of June, 1939, and having been duly excepted to by libelants, was filed in the Office of the Clerk of this Court on the 9th day of June, 1939.

VI.

In addition to the specific statute referred to in paragraph I hereof, the decision of the Supreme Court of the

United States in the following case is believed to sustain the jurisdiction of that court:

International Ladies Garment Workers Union v. *Donnelly Garment Co.* (1938), 304 U. S. 243, 58 S. Ct. 875, 82 L. Ed. 1316.

Dated at Seattle, Washington, this 19th day of June, 1939.

Respectfully submitted,

BOGLE, BOGLE & GATES,
STANLEY B. LONG,
EDWARD G. DOBRIN,
Proctors for Libelants and Appellants herein.

EXHIBIT "A".

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

No. 48.

PARAMINO LUMBER COMPANY, a Corporation, and UNION INSURANCE SOCIETY OF CANTON, LTD., a Corporation, Complainants,

vs.

WM. A. MARSHALL, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Worker's Compensation Act, and John T. Clark, Defendants.

Order.

Plaintiffs employer and insurance carrier complaining that after the defendant Clark, a longshoreman, was injured upon one of the employer's vessels in Seattle harbor waters and was under date of August 26, 1931, granted a compensation order and award under the Longshoremen's and Harbor Workers' Compensation Act (Title 33, U. S. C. A.; Secs. 901, et seq.) and that no proceedings were had to review, suspend or set aside that award in whole or in part, the Senate and House of Representatives of the United States of America passed Private Act No. 445 of the 74th Congress (H. R. 4439), approved April 10, 1936, for the relief of said John T. Clark and that pursuant to said Private Act defendant Marshall, Deputy Commissioner under said Longshoremen's and Harbor Workers' Compensation Act, under date of March 13, 1939, did make and enter a further compensation order and award of compensation in favor of said Clark, and further that the action of said Deputy Commissioner in so making said award of March 13, 1939, was wholly arbitrary and capricious and against the credible testimony adduced at the hearing and was in all respects illegal;

And plaintiffs further alleging that said Private Act of Congress and said award of March 13, 1939, made pursuant

thereto are under the Fifth and Fourteenth Amendments illegal, unconstitutional and void, seek a review of such acts of the Deputy Commissioner and a hearing upon all of the allegations of plaintiffs' complaint before a 3-judge court pursuant to the provisions of 28 U. S. C. A., Sec. 380(a), and seek a determination by such court that, as alleged by plaintiffs, said Private Act of Congress and said award of the Deputy Commissioner of March 13, 1939, made thereunder are illegal, unconstitutional and void and of no effect and seek temporary restrainer and interlocutory and permanent injunctive relief against said Private Act of Congress and said award;

And such application for such interlocutory and permanent injunctive relief and for such 3-judge court having been presented to the undersigned judge, and the said undersigned judge having immediately thereupon requested the Senior Circuit Judge of the Ninth Circuit to designate two other judges to participate with the undersigned judge as a 3-judge court in hearing and determining such application; and thereupon said Senior Circuit Judge having immediately so designated two other judges for such purpose, to-wit: Honorable William Healy, United States Circuit Judge for the Ninth Circuit, and Honorable Edward E. Cushman, United States District Judge for the Western District of Washington in said Circuit, and by the provisions of said 28 U. S. C. A., Sec. 380(a), it being the duty of said two other judges so designated and of the undersigned judge as such 3-judge court to participate in such hearing and determination; now, therefore,

The undersigned judge does hereby call to his assistance said the Honorable William Healy and said the Honorable Edward E. Cushman to act with the undersigned judge as a 3-judge court pursuant to the requirements of 28 U. S. C. A., Sec. 380(a), and to hear and determine such applications and to hear and determine any and all other matters which may properly come before the court during the progress of the above entitled cause; and

By and with the advice and consent of the members of the court and upon stipulation of counsel for all interests appearing, the date and place of convening of said 3-judge

court for the purpose of hearing the application for interlocutory injunction and such other matters as may properly come before the court are hereby fixed on April 24, 1939, at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, in the north court room of this court in the Post Office Building at Seattle, Washington, provided that the time and place of hearing such application may by order be changed should convenience require it; and

The undersigned judge being now advised by oral stipulation of counsel made in open court that the application for said interlocutory injunction will be submitted at said hearing upon the pleadings, motions, admissions and briefs already filed, made and appearing of record, and upon the arguments of counsel, without further or additional proof, it is further ordered that the Clerk forthwith mail to Judges Healy and Cushman each a copy of all of such pleadings, motions, briefs, and records and a copy of this order, and a copy of temporary restraining order, and that the attorneys of record for plaintiffs are hereby directed to forthwith furnish to the Clerk sufficient copies to enable the Clerk to comply with the foregoing order as to mailing.

It is further hereby ordered that the Clerk forthwith give notice of said hearing on April 24, 1939, and of the entry of this order to the Attorney General of the United States, Department of Justice, Washington, D. C., by forthwith mailing by registered mail to said Attorney General a certified copy of this order, and the attorneys of record for the plaintiffs are hereby ordered to pay to the Clerk the cost of such certified copy and of such registered mailing. Counsel for all parties appearing having heretofore in open court stipulated that all parties do now have actual notice of said hearing on April 24, 1939, the Clerk is hereby directed to forthwith mail a copy of this order to each of the following:

1. Bogle, Bogle & Gates and Stanley B. Long, Attorneys for Plaintiffs, Seattle, Washington.

2. Oscar A. Zabel, Attorney for Defendant-Claimant John T. Clark, Seattle, Washington.

3. Honorable J. Charles Dennis, United States Attorney, and Gerald Shucklin, Assistant United States Attorney, Attorneys for Defendant William A. Marshall, Seattle, Washington.

Done in open court this 29th day of March, 1939.

(Sd.) John C. Bowen, United States District Judge.

EXHIBIT "B".

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

In Admiralty. Nos. 47 and 48.

PARAMINO LUMBER COMPANY, a corporation, and UNION INSURANCE SOCIETY OF CANTON, LTD., a corporation, *Libelants,*

vs.

WM. A. MARSHALL, Deputy Commissioner, Fourteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and JOHN T. CLARK, *Respondents.*

Memorandum Decision.

Filed May 10, 1939

Bogle, Bogle & Gates and Stanley Long, Seattle, Washington, Attorneys for Libelants.

J. Charles Dennis, United States Attorney, Seattle, Wash., Gerald Shucklin, Asst. United States Attorney, Seattle, Wash., attorneys for Respondent Marshall.

Oscar A. Zabel, Seattle, Washington, Attorney for Respondent Clark.

Before Healy, Circuit Judge, and Cushman and Bowen, District Judges.

Some of the historical background of these cases may be found in the decisions of the District Court, 18 F. Supp.

645, and of the Ninth Circuit Court of Appeals, 95 F. (2d) 203.

These are two consolidated suits in admiralty before this 3-judge court, convoked pursuant to 28 U. S. C. A., Sec. 280a, brought by libelants employer and insurance carrier against respondents Deputy Commissioner and John T. Clark for temporary, interlocutory and permanent injunctive relief against Private Act No. 445 of the 74th Congress (H. R. 4439) for the relief of John T. Clark, and against a supplemental order and award of compensation of more than $4000 made under that Private Act to Clark, a longshoreman, upon the alleged ground that the Private Act and award are illegal, unconstitutional and void, and that they (as libelants allege) deny to libelants the equal protection of the laws and deprive them of their property without due process of law contrary to the Fifth and Fourteenth Amendments.

Cause No. 47 was commenced as an independent equity suit and Cause No. 48 was commenced as a suit for review by the District Court of the Deputy Commissioners' supplemental award. The causes have been consolidated and transferred to the admiralty side of the court. Both seek the same injunctive relief above noted. Respondents except to the libels on the ground that the libels do not state sufficient facts for the relief demanded. The sole question for decision is whether the Private Act is constitutional and a valid amendment to the Longshoremen's and Harbor Workers' Compensation Act (Title 33, U. S. C. A., Secs. 901, et seq.) Respondents contend that it is valid because it affects only the remedy and not the right of John T. Clark. Libelants insist that the Private Act is unconstitutional and void because the rights of the parties had been fixed by a previous binding award of compensation which cannot be changed by the effect of the Private Act giving as it does private relief only to Clark and to no one else similarly situated.

The questioned Private Act of Congress provides as follows:

"AN ACT

For the relief of John T. Clark, of Seattle, Washington.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the case of John T. Clark, of Seattle, Washington, whose disability compensation under the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, was terminated as of July 5, 1931, by a compensation order filed August 26, 1931, the Employees' Compensation Commission be, and it is hereby, authorized and directed to review such order in accordance with the procedure prescribed in respect of such claims in section 19 of said Act, and in accordance with such section to issue a new compensation order which may terminate, continue, increase, or decrease such compensation, the provisions of sections 21 and 22 of the said Act, as amended, to the contrary notwithstanding: Provided, That such new order shall not affect any compensation paid under authority of the prior order.

"Approved, April 10, 1936."

BOWEN, *District Judge:*

Much of what is stated in the following quotations was said with reference to state statutes, but the principles stated apply equally to Acts of Congress.

"A presumption in favor of constitutionality is raised by the mere fact of the enactment of a statute by the legislature; and the burden of showing that it is unconstitutional is on the party asserting it. * * *." 12 C. J. 791-794. "As to the degree and extent of this presumption, the rule, as variously stated, is that every reasonable presumption will be made in favor of the validity of a statute; * * * and also that doubt, a fair doubt, any, and all, doubts, and every reasonable doubt as to the constitutionality of a statute will be resolved in favor of its validity; * * *." 12 C. J. 794-795. "* * * Other statements are that, where doubt exists whether there is a con-

flict between the statute and the constitution, the statute must prevail, and that the statute must be upheld unless its invalidity appears beyond all doubt, * * *." 12 C. J. 798.

In Williams *v.* Norris, 25 U. S. 72 (12 Wheat. 117), one question was which one of two persons had the paramount title in certain lands. Norris claimed that his title was perfected by proceedings under a statute of the state of Tennessee entitled "an act for the relief of Ezekiel Norris", which provided: "Be it enacted," etc., "that the commissioner of West Tennessee be, and he is hereby authorized to issue to Ezekiel Norris, certificates or warrants to the amount of 2,280 acres, being the amount of two entries, No. 2,046 for 1,000 acres, and No. 2,047 for 1,280 acres, on which no warrants or grants were issued; provided, that the said Ezekiel Norris shall produce sufficient evidence to the said commissioner that the consideration for said entries was paid, and that no warrant or grant ever issued on said entries."

Williams contended that statute was unconstitutional, but the court overruled that contention and at pages 80-81 (12 Wheat. 127-128) by Marshall, C. J., said: "What difference is there, so far as respects its constitutionality, between the act passed in his (Norris') particular case, and the act containing a general reference of all cases of the same description to the commissioner? * * * There are, undoubtedly, great and solid objections to legislation for particular cases. But these objections do not necessarily make such legislation repugnant to the constitution of the United States."

That old case of Williams *v.* Norris, *supra*, decided in 1827, may be somewhat involved on the facts, but it is clear that in that case Chief Justice Marshall overruled the constitutional objection to a private act of a state legislature for the perfection of one man's title to land against the adverse claims of another man, and held in effect that the fact that legislation is for the private relief of one man in his relationship with another does "not necessarily make such legislation repugnant to the constitution of the United States". Counsel have not cited and the writer of this opinion is not advised of any later Supreme Court case

overruling that judgment of Marshall. That situation, until unmistakably cleared up by later Supreme Court decision, renders this three-judge District Court unable to rule without doubt that the Private Act of Congress for the relief of John T. Clark here assailed is unconstitutional. Since its invalidity is not so free from doubt as to overcome the presumption of its validity, the Private Act must be upheld by this court.

The exceptions to the libels will be sustained. An order or orders carrying the foregoing ruling into effect may be settled upon notice or stipulation.

——— ———,
Circuit Judge.
EDWARD E. CUSHMAN,
District Judge.
JOHN C. BOWEN,
District Judge.

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

IN ADMIRALTY. NOS. 47 and 48.

PARAMINO LUMBER COMPANY, *et al.*,

vs.

WM. A. MARSHALL, Deputy Commissioner, *et al.*

HEALY, Circuit Judge, dissenting.

I regret my inability to agree with my associates, but the invalidity of the private act does not seem to me doubtful.

The beneficiary of the act, Clark, was injured in January, 1931 while in the employ of the libellant Paramino Lumber Company. A claim for compensation was filed by Clark. Upon hearing before the deputy commissioner in August, 1931, an award of compensation was made in which it was determined that the claimant had been wholly disabled from the time of the injury to July 5, 1931, but had recovered from his injury and disability on the latter date. The employer and the insurance carrier paid compensation for the

period of disability, pursuant to the order. Under the terms of the Longshoremen's Act (Sec. 21 (a); 33 U. S. C. A. Sec. 921 (a)) the compensation order became final at the expiration of thirty days thereafter, there having been no proceeding to suspend or set it aside.

So far as material here, Sec. 22 of the Longshoremen's Act, in effect then as now, provides that upon his own initiative, or upon the application of any party in interest, on the ground of a change in condition or because of mistake in a determination of fact, the deputy commissioner may review a compensation case, at any time prior to one year after the date of the last payment of compensation, and may issue a new compensation order continuing, reinstating, or increasing compensation. No review was had of the case as permitted by this provision. On April 10, 1936 Congress passed the private act in question. The original order confessedly involved no fraud, and it is conceded that the award now sought to be enjoined was made solely under authority of the special act.

There are doubtless many instances in which injured longshoremen have found themselves in the unfortunate plight of Mr. Clark. Compare, for example, the facts in Kobilkin *v.* Pillsbury, 9 Cir., — F. (2d) —. I cannot but believe that the private act, singling out as it does the libellants for the imposition of a burden not imposed by Congress on others in like situation, impinges on their constitutional rights guaranteed by the due process clause of the Fifth Amendment. The arbitrary nature of the act is unrelieved by any asserted distinction which might serve to differentiate the obligation of these parties from that of other employers or insurance carriers in like circumstances. What congress has done is to authorize an award of money for the relief of a private individual, payable not out of the public treasury, but out of the pockets of other private parties guilty of no fault. The statute involved in Williams *v.* Norris, 25 U. S. 72, appears to have been purely remedial, and I see nothing in that decision which would support this legislation.

I think the statute is invalid on grounds apart from the frailties just discussed. It purports to extend or remove the time limits imposed by Secs. 21 and 22 of the Longshore-

men's Act, and is applicable only in a case where these time limits had already expired. In Danzer & Co. *v.* Gulf & Ship Island Railroad Co., 268 U. S. 633, the court dealt with a parallel situation. It was there pointed out that the Interstate Commerce Act created a cause of action against the carrier (in that case the right to damages for misrouting) and at the same time operated as a limitation upon liability. It was held that in the case of such statutory causes of action the lapse of the time limit not only bars the remedy but destroys the liability; and to give the statute a retroactive effect would be to deprive the carrier of its property without due process of law in contravention of the Fifth Amendment.

Similarly, the Longshoremen's Act (Sec. 4) creates a cause of action for compensation, irrespective of fault. It also limits the time within which an award of additional compensation may be made by the deputy commissioner. This period had expired prior to the enactment of the private act here in question. As of the latter date liability no longer existed. Thus the act not only supplies a remedy but necessarily imports the creation of a new liability.

It would seem that the principle of the Danzer case is equally applicable to general and to private statutes, however free from other infirmities the latter may be.

I think the restraining order heretofore granted should be made permanent.

WILLIAM HEALY,
U. S. Circuit Judge.

Jurisdictional statement with attached copies endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Jun. 24, 1939. Elmer Dover, Clerk, by S. Cook, Deputy.